

1
2
3 UNITED STATES DISTRICT COURT

4 DISTRICT OF NEVADA

5 * * *

6 JUSTIN ODELL LANGFORD,

Case No. 3:19-cv-00594-MMD-CSD

7 Petitioner,

ORDER

8 v.

9 WARDEN RENEE BAKER, *et al.*,

10 Respondents.

11 **I. SUMMARY**

12 This is a habeas corpus proceeding under 28 U.S.C. § 2254 brought by Petitioner
13 Justin Odell Langford, a person incarcerated in Nevada who is proceeding *pro se*.
14 Currently before the Court is Langford's motion for leave to amend petition for writ of
15 *habeas corpus*. (ECF No. 81.) Respondents oppose the motion (ECF No. 82) and
16 Langford filed his reply. (ECF No. 84.) Also before the Court is Langford's motion for stay
17 and abeyance (ECF No. 83) and declaration of election to abandon unexhausted claims
18 (ECF No. 91). For the reasons discussed below, the Court denies Langford's motion for
19 leave to amend and denies Langford's motion for stay and abeyance.

20 **II. BACKGROUND**

21 On September 25, 2019, Langford initiated this federal proceeding by filing a pro
22 se petition alleging six grounds for relief with numerous subclaims. (ECF No. 1.)
23 Respondents filed their first motion to dismiss. (ECF No. 30.) The Court granted in part
24 determining that Ground 2(D1) will not be construed as a ground for relief, Grounds 2(K),
25 (Y), (T), (U), (Y), (Z), and (A1) are unexhausted, the second portion of Ground 2(W)
26 alleging that trial counsel failed to "request missing witness jury instruction" is
27 unexhausted, and Grounds 3 and 4 are dismissed with prejudice. (ECF No. 68.) The
28

1 Court also deferred a ruling on exhaustion and any procedural default of Grounds 2(B),
 2 (C), (D), (F), (Q), (R), and (B1). (*Id.*)

3 Respondents filed a second partial motion to dismiss. (ECF No. 71.) The Court
 4 granted Respondents' second partial motion to dismiss and dismissed Grounds 2(B), (C),
 5 (D), (F), (Q), (R), and (B1) as procedurally barred. (ECF No. 80.) The Court found
 6 Grounds 2(K), (Y), (T), (U), (Y), (Z), (A1), and the second portion of Ground 2(W) alleging
 7 that trial counsel failed to "request missing witness jury instruction" unexhausted and
 8 instructed Petitioner to elect to dismiss his unexhausted claims, dismiss his entire petition
 9 without prejudice to return to state court to exhaust his unexhausted claims, or seek a
 10 motion for stay and abeyance to hold his exhausted claims in abeyance while he returns
 11 to state court to exhaust his unexhausted claims. (*Id.*)

12 **III. DISCUSSION**

13 **A. Motion for Leave to Amend**

14 Langford seeks leave to amend his petition for writ of habeas corpus pursuant to
 15 Federal Rule of Civil Procedure 15. (ECF No. 81.) He requests leave to add seven new
 16 grounds that he represents have been exhausted in state court. (*Id.* at 2.) He has
 17 reviewed the exhibits filed in the instant matter and requests permission to "add all the
 18 claims that he had left off the original petition." (*Id.* at 3.) Langford acknowledges that the
 19 additional grounds he seeks to add have been declared procedurally defaulted by the
 20 state courts. (ECF No. 84 at 3.) He argues, however, that the lower courts went against
 21 their own authorities and supreme court rulings. (*Id.*)

22 Under Federal Rule of Civil Procedure 15(a)(2), leave to amend should be freely
 23 given "when justice so requires." But leave to amend "is not to be granted automatically,"
 24 and the court "considers the following five factors to assess whether to grant leave to
 25 amend: (1) bad faith, (2) undue delay, (3) prejudice to the opposing party, (4) futility of
 26 amendment; and (5) whether plaintiff has previously amended his complaint." *In re W.*
 27 *States Wholesale Natural Gas Antitrust Litig.*, 715 F.3d 716, 738 (9th Cir. 2013) (internal
 28

1 punctuation omitted).

2 Leave to amend may be denied based upon futility alone. *Bonin v. Calderon*, 59
 3 F.3d 815, 845 (9th Cir. 2004). To assess futility, the court necessarily evaluates whether
 4 relief may be available on the merits of the proposed claim. *Caswell v. Calderon*, 363
 5 F.3d 832, 837-39 (9th Cir. 2004) (conducting a two-part futility analysis reviewing both
 6 exhaustion of state court remedies and the merits of the proposed claim). If the proposed
 7 claims are untimely, unexhausted, or otherwise fail as a matter of law, amendment should
 8 be denied as futile. See *id.*

9 Langford has failed to comply with Local Rule 15-1(a), which requires a party
 10 seeking leave to amend to “attach the proposed amended pleading to
 11 any motion to amend, so that it will be complete in itself without reference to the
 12 superseding pleading.” Langford failed to provide a complete proposed amended petition,
 13 as required by Local Rule 15-1(a). Additionally, Langford’s amendments are futile as the
 14 new claims would be subject to dismissal.

15 Langford’s motion to amend will be denied on the basis that he has failed to
 16 establish good cause for his failure to include his new claims and additional allegations in
 17 the original petition and because amendment to add procedurally defaulted new claims
 18 would be futile.

19 **B. Motion for Stay and Abeyance and Declaration of Election to Abandon
 20 Unexhausted Claims**

21 On January 5, 2022, Langford filed a motion for stay and abeyance so that he may
 22 exhaust those claims in state court. (ECF No. 83.) On March 30, 2022, however, Langford
 23 filed a declaration of election to abandon unexhausted claims informing the Court of his
 24 intent to dismiss his unexhausted claims and pursue his remaining claims. No opposition
 25 having been filed by Respondents and the time for doing so having expired, Langford’s
 26 request to dismiss his unexhausted claims is granted. Langford’s motion for stay and
 27 abeyance is denied as moot.

28 ///

1 **IV. CONCLUSION**

2 The Court notes that the parties made several arguments and cited to several
3 cases not discussed above. The Court has reviewed these arguments and cases and
4 determines that they do not warrant discussion as they do not affect the outcome of the
5 issues before the Court.

6 It is therefore ordered that Langford's motion for leave to amend his petition for writ
7 of *habeas corpus* (ECF No. 81) is denied.

8 It is further ordered that Langford's motion for stay and abeyance (ECF No. 83) is
9 denied as moot.

10 It is further ordered that Claims 2(K), (Y), (T), (U), (Y), (Z), (A1), and the second
11 portion of Ground 2(W) alleging that trial counsel failed to "request missing witness jury
12 instruction" are dismissed without prejudice as unexhausted and by Langford's request.

13 It is further ordered that Respondents will have 60 days to answer the remaining
14 claims of the petition in this case.

15 It is further ordered that Langford will have 30 days following service of the answer
16 to file and serve a reply brief.

17 It is further ordered that in the answer, Respondents must specifically cite to and
18 address the applicable state court written decision and state court record materials, if any,
19 regarding each claim within the response as to that claim.

20 It is further ordered that any additional state court record and related exhibits must
21 be filed in accordance with LR IA 10-3, LR IC 2-2, and LSR 3-3 and include a separate
22 index identifying each additional exhibit by number or letter. The index must be filed in
23 CM/ECF's document upload screen as the base document to receive the base docket
24 number (e.g., ECF No. 10). Each exhibit will then be filed as "attachments" to the base
25 document—the index—to receive a sequenced sub-docket number (e.g., Exhibit A (ECF
26 No. 10-1), Exhibit B (ECF No. 10-2), Exhibit C (ECF No. 10-3), and so forth). If the exhibits
27 will span more than one filing, the base document in each successive filing must be either
28 a copy of the index or volume cover page. See LR IC 2-2(a)(3)(A).

1 It is further ordered that, notwithstanding LR IC 2-2(g), paper copies of any
2 electronically filed exhibits—for this case—need not be provided to chambers or to the
3 staff attorney, unless later directed by the court.

4 It is further ordered that all other instructions set forth in the Court's October 22,
5 2019 order (ECF No. 4) remain in effect.

6 DATED THIS 3rd Day of May 2022.

7
8 

9 MIRANDA M. DU
10 CHIEF UNITED STATES DISTRICT JUDGE

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28